

LEGISLATURE OF NEBRASKA
NINETY-NINTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 373

Introduced by Bourne, 8; Schimek, 27

Read first time January 11, 2005

Committee: Rereferred to Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to the Administrative Procedure Act; to amend
2 sections 84-907.06, 84-907.07, and 84-920, Reissue
3 Revised Statutes of Nebraska; to change provisions
4 relating to the act; to provide for legislative review of
5 rules and regulations as prescribed; to harmonize
6 provisions; and to repeal the original sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Whenever an agency proposes to adopt, amend,
2 or repeal a rule or regulation, either prior to scheduling a public
3 hearing on a proposed rule or regulation or at the time the agency
4 applies to the Governor for a waiver of the notice of public
5 hearing under section 84-907, the agency shall provide to the
6 Governor for review (1) a description of the proposed rule or
7 regulation and the entity or entities it will impact, (2) an
8 explanation of the necessity of the proposed rule or regulation,
9 (3) a statement that the proposed rule or regulation is consistent
10 with legislative intent, (4) a statement indicating whether the
11 proposed rule or regulation is the result of a state mandate on a
12 local governmental subdivision and if the mandate is funded, (5) a
13 statement indicating if the proposed rule or regulation is the
14 result of a federal mandate on state government or on a local
15 governmental subdivision and if the mandate is funded, (6) a
16 statement identifying the fiscal impact the implementation of the
17 rule or regulation will have on the agency, (7) a statement
18 identifying the potential impact the proposed rule or regulation
19 will have on other state agencies, (8) a statement identifying the
20 fiscal impact the proposed rule or regulation will have on the
21 entity or entities impacted, (9) a statement that the agency will
22 solicit public comment on the proposed rule or regulation before
23 the public hearing, and (10) a statement indicating whether or not
24 the agency has utilized the negotiated rulemaking process as
25 provided for in the Negotiated Rulemaking Act with respect to the
26 proposed rule or regulation.

27 Sec. 2. Section 84-907.06, Reissue Revised Statutes of
28 Nebraska, is amended to read:

1 84-907.06. Whenever an agency proposes to adopt, amend,
2 or repeal a rule or regulation, (1) at least thirty days before the
3 public hearing when notice of a proposed rule or regulation is sent
4 out or (2) at the same time the agency applies to the Governor for
5 a waiver of the notice of public hearing, the agency shall send to
6 the Executive Board of the Legislative Council (a) a copy of the
7 hearing notice required by section 84-907, (b) if applicable, a
8 draft copy of the rule or regulation, and (c) ~~if not included in~~
9 ~~the hearing notice, a description but not necessarily a~~
10 ~~quantification of the fiscal impact on state agencies, political~~
11 ~~subdivisions, and persons being regulated~~ the information provided
12 to the Governor pursuant to section 4 of this act.

13 Sec. 3. Section 84-907.07, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 84-907.07. The chairperson of the Executive Board of the
16 Legislative Council or committee staff member of the board shall
17 refer materials received pursuant to section 84-907.06 for review
18 (1) to the chairperson of the standing committee of the Legislature
19 which has subject matter jurisdiction over the issue involved in
20 the rule or regulation or which has traditionally handled the issue
21 and (2) if practicable, to the member of the Legislature who was
22 the primary sponsor of the legislative bill that granted the agency
23 the rulemaking authority, if the member is still serving or, if the
24 legislative bill was amended to include the rulemaking authority,
25 to the primary sponsors of the amendment granting rulemaking
26 authority. The committee or committee chairperson of such standing
27 committee of the Legislature having subject matter jurisdiction may
28 submit a written or oral statement at the public hearing on the

1 rule or regulation or, if the Governor authorizes a waiver of the
2 notice of public hearing, may submit a written statement to the
3 agency and to the Secretary of State to be entered in the records
4 relating to the rule or regulation.

5 Sec. 4. (1) After an agency submits a copy of each
6 amendment or rule or regulation to the Attorney General pursuant to
7 section 84-905.01, any person who feels aggrieved by the amendment,
8 rule, or regulation or believes that the amendment, rule, or
9 regulation is in excess of the statutory authority or jurisdiction
10 of the agency, is unconstitutional, or is inconsistent with the
11 legislative intent of the authorizing statute may file a complaint
12 with the Chairperson of the Executive Board of the Legislative
13 Council. The complaint shall explain in detail the person's
14 contentions.

15 (2) The chairperson of the executive board or a committee
16 staff member of the executive board shall refer the complaint to
17 the chairperson of the standing committee of the Legislature which
18 has subject matter jurisdiction over the issue involved in the rule
19 or regulation or which has traditionally handled the issue and, if
20 practicable, to the member of the Legislature who was the primary
21 sponsor of the legislative bill that granted the agency the
22 rulemaking authority if the member is still serving or, if the
23 legislative bill was amended to include the rulemaking authority,
24 to the primary sponsor of the amendment granting rulemaking
25 authority if the member is still serving.

26 (3) The standing committee and primary sponsor may
27 consider the complaint and, if such committee or primary sponsor
28 concludes that the complaint has merit, then such committee or

1 primary sponsor may request a written response from the agency
2 which shall include, but not be limited to (a) a description of the
3 proposed rule or regulation, (b) a description of the legislative
4 intent of the statute granting the agency rulemaking authority and
5 a statement explaining how the proposed rule or regulation is
6 consistent with legislative intent, and (c) an explanation of the
7 extent to which and how any public comment was taken into
8 consideration by the agency and incorporated into the copy of the
9 amendment or rule or regulation. The agency shall respond within
10 sixty days of a request, and such response shall be a public
11 record.

12 Sec. 5. Section 84-920, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 84-920. Sections 84-901 to 84-920 and sections 1 and 4
15 of this act shall be known and may be cited as the Administrative
16 Procedure Act.

17 Sec. 6. Original sections 84-907.06, 84-907.07, and
18 84-920, Reissue Revised Statutes of Nebraska, are repealed.